

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ARCHER AND WHITE SALES, INC.,

§

Plaintiff,

§

v.

§

HENRY SCHEIN, INC., DANAHER
CORPORATION, INSTRUMENTARIUM
DENTAL INC., DENTAL EQUIPMENT
LLC, KAVO DENTAL TECHNOLOGIES,
LLC AND DENTAL IMAGING
TECHNOLOGIES CORPORATION,

§

CIVIL ACTION NO.:
2:12-CV-00572-JRG-RSP

Defendants.

§

**PLAINTIFF ARCHER AND WHITE SALES, INC.'S RESPONSE IN OPPOSITION
TO DEFENDANTS' JOINT MOTION FOR EXTENSION OF STAY OF DEADLINES**

Plaintiff Archer and White Sales, Inc. ("Archer Dental") files this opposition to Defendants' Joint Motion for Extension of Stay of Deadlines. The joint motion for extension of stay of deadlines should be denied.

Archer Dental did not oppose the Defendants' initial request for a 30-day stay of all deadlines, and Defendants' request was granted. As Defendants concede, Archer Dental would not have opposed another 30-day extension provided Defendants agreed that they would not continue to seek serial 30-day extensions, which would have had the practical effect of an indefinite stay of this action. Archer Dental even assured Defendants in writing that it would not use Defendants' agreement to forego further extension requests and their participation in discovery in this Court as a basis for claiming any waiver of Defendants' right to seek to compel this action to arbitration. Thus, Defendants' stated concern about a waiver is unfounded. *See* Defs.' Joint Mot. for Extension of Stay of Deadlines at 1, 2.

Defendants' motion reflects their true objective: avoidance of this Court and continued delay of Archer Dental's pursuit of this action. As reflected in their filings with this Court, Defendants' effort to compel arbitration this action – an “action for injunctive relief” expressly excluded by the very arbitration provision on which Defendants rely – is just one in a series of dilatory tactics that Defendants intend to employ. Defendants have made no secret of their intention to file interlocutory appeals should their unmeritorious motions to compel arbitration be denied. They have also made no secret of their intentions to file motions to dismiss should their motions to compel arbitration and subsequent threatened appeals be rejected. *See* Manufacturer Defs.' Mot. to Compel Arbitration at 1 n.1; Schein's Mot. to Compel Pl. to Arbitrate at 10 n.10. The motion for extension of deadlines is simply another delaying tactic by Defendants and should not be permitted, particularly when the only potentially imminent deadlines consist of a status conference with the Court and initial disclosures.

For the foregoing reasons, Plaintiff Archer Dental requests that the Court deny Defendants' joint motion for extension of stay of deadlines.

DATED: October 25, 2012.

Respectfully submitted,

/s/ Jerry L. Beane

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify on this 25th day of October, 2012, that a copy of the foregoing *Plaintiff Archer and White Sales, Inc.'s Response in Opposition to Defendants' Joint Motion for Extension of Stay of Deadlines* was filed and served by operation of the electronic filing system of the U.S. District Court for the Eastern District of Texas upon all counsel of record who have consented to receive notice of filings in this matter.

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